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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/899,029	07/06/2001	Gary P. Cote		6055

7590 07/10/2003

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EXAMINER

SICONOLFI, ROBERT

ART UNIT	PAPER NUMBER
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3683

DATE MAILED: 07/10/2003

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Paper No. 14

Application Number: 09/899,029
Filing Date: July 06, 2001
Appellant(s): COTE, GARY P.

MAILED

JUL 10 2003

GROUP 3600

James C. Wray
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 6/5/03.

(1) *Real Party in Interest*

For the above reasons, it is believed that the rejections should be sustained.

(2) *Related Appeals and Interferences*

The brief does not contain a statement identifying the related appeals and interferences which will directly affect or be directly affected by or have a bearing on the decision in the pending appeal is contained in the brief. Therefore, it is presumed that there are none. The Board, however, may exercise its discretion to require an explicit statement as to the existence of any related appeals and interferences.

(3) *Status of Claims*

The statement of the status of the claims contained in the brief is correct.

(4) *Status of Amendments After Final*

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) *Summary of Invention*

The summary of invention contained in the brief is correct.

(6) *Issues*

The appellant's statement of the issues in the brief is correct.

(7) *Grouping of Claims*

The appellant's statement in the brief that certain claims do not stand or fall together is not agreed with because the claims within the groups argued are not patentably distinct. They do not constitute a new invention but merely supplies further details of that which is presented in the representative claim of the group.

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(8) Claims Appealed

The copy of the appealed claims contained in the Appendix to the brief is correct.

(9) Prior Art of Record

6,173,799	Miyazaki et al	1-2001
4,966,047	Krauer et al	10-1990

(10) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 31-34 are rejected under 35 U.S.C. 102. This rejection is set forth in prior Office Action, Paper No. 8.

Claims 3-15, 25, 26, 35, 36, and 39-47 are rejected under 35 U.S.C. 103. This rejection is set forth in prior Office Action, Paper No. 8.

(11) Response to Argument

With regard to the rejection of claims 25 and 26 under 35 U.S.C. 112, the submitted amendment filed concurrently with the Brief fixes the errors and overcomes this rejection.

With regard to the rejection of claims 31-34 under 35 U.S.C. 102, Appellant alleges that Krauer et al neither shows nor by inherency provides a basis for a twist-type handle to control a brake. The examiner would like to note that instant claim 31 is not directed to a wheelbarrow. The claim contains the phrase "of vehicles", but the examiner interprets this to be merely intended use for the device. Furthermore, even if the claim was interpreted as the combination of a vehicle and a brake controlled by a

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twist-type handle, Krauer discloses a vehicle (namely a bicycle 10). Appellant further argues the structure of Krauer and how it is different from the instant invention.

However, this is irrelevant as the only structure present in the claims with regard to the control is the phrase "twist-type handle". With regard to claims 32-34, these limitations merely disclose what would be inherent with a twist-type handle controlling a brake.

When the handle is twisted, the brake would be applied in proportion to the amount of rotation of the handle (since that is related to the amount of cable drawn into the handle), thus slowing the vehicle.

With regard to the rejection of claims 3-15, 25, 26, 46, and 47 under 35 U.S.C. 103, Appellant argues that combination is not obvious. Appellant first argues each reference separately. Appellant argues that Miyazaki teaches away from the instant invention because it has a motor assisting means and therefore does not control the speed through the use of a brake control handle. The examiner argues that there is nothing in the instant claims 46 and 47 that preclude a motor assist means. Furthermore, Miyazaki discloses a brake system (lever 12, drum brake see figure 7) that will control the speed of the wheelbarrow by reducing the speed when applied. Appellant argues that Krauer teaches away from the claims presented. The basis of the argument is that the structure of Krauer and the instant invention are not identical. The examiner strongly contests this argument on the basis that the entirety of the structure presented in the independent claims 46 and 47 is solely the term "twist-type brake control handle". Krauer is a twist-type brake control handle and therefore reads upon

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the claims as presented. There is no structure in the instant claims 46 and 47 that precludes the use of Krauer as a basis for rejection.

Appellant further argues that the combination of Miyazaki and Krauer on the basis that the references do not permit dumping while braking. The Appellant bases this on the fact that Miyazaki "locks the wheel tread to the frame". By this the examiner assumes the Appellant means that the brake locks the wheel tread *relative* to the frame, since Miyazaki discloses a drum brake (figure 7) not a wheel tread brake. Assuming the examiner is correct in his interpretation of the Appellant's comments, the examiner would like to note that when braked the instant invention also locks the wheel tread relative to the frame. This is the epitome of braking a wheeled vehicle. If the wheel tread is able to move relative to the frame, then the vehicle would move and the vehicle can not be considered braked. Furthermore, the examiner believes that Miyazaki does allow dumping while braking. If the wheel is braked and therefore can the wheel not rotate about its axis, then if the wheelbarrow is tipped it will merely rotate about the contact point of the wheel and the ground rather than the wheel axle. With regard to claim 28, appellant takes issue with the of Official Notice by the examiner. The Appellant has not before contested the use of Official Notice and thus has not made a seasonably challenge as required by the MPEP 2144.03 .

With regard to the rejection of claims 35 and 36 under 35 U.S.C. 103, Appellant argues is improper because Krauer does not disclose the a clipper means as a parking brake. This was admitted by the examiner and therefore, the rejection under 35 U.S.C. 103 was made not 35 U.S.C. 102. Furthermore, parking brake means can be seen from

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the art of record. Miyazaki appears to disclose a clipper mechanism in combination with brake lever 12. Patterson (U. S. Patent no. 3,950,005) submitted by the Appellant in paper no 4 discloses a parking brake means (pin 39 which "clips" into slot 38b).

With regard to the rejection of claims 39-45 under 35 U.S.C. 103, Appellant argues against the use of Official Notice by the examiner. The Appellant has not before contested the use of Official Notice and thus has not made a seasonably challenge as required by the MPEP 2144.03 . With regard to claims 39-42, the use of drum brakes with a wheelbarrow was asserted. The examiner would like to note that Miyazaki discloses a drum brake with a wheelbarrow (see figure 7). With regard to claims 43-45, the use of disc brakes with a wheelbarrow was asserted. The examiner would like to note that Burbank (U. S. Patent no. 5,690,191) submitted by the Appellant in paper no. 4 discloses such in figure 5.

For the above reasons, it is believed that the rejections should be sustained.

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Respectfully submitted,

Robert A. Siconolfi
Examiner
Art Unit 3683

RS
June 29, 2003

Conferees

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JL

MG

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